

This copy is for your personal, non-commercial use only. Reproductions and distribution of this news story are strictly prohibited.

• [View reprint options](#) • [Order a reprint article now](#) • [Print](#)

Private Equity Bigwig Wins \$3.2M From UBS After Losses

NOVEMBER 1, 2023 • [ERIC RASMUSSEN](#)

Wealthy investors are still showing little forgiveness about a controversial options strategy offered by UBS.

An arbitration panel has ordered UBS to pay \$3.2 million in damages to a well-known New York private equity executive and his wife who said the bank committed fraud when it put them in the risky and controversial vehicle. The strategy, known as the Yield Enhancement Strategy, or “YES,” has cost the bank millions in damages as well as \$25 million to settle Securities and Exchange Commission fraud charges.

On Friday, the Financial Industry Regulatory Authority panel awarded \$2.6 million in compensatory damages to Bret D. Pearlman, the co-founder of private equity firm Elevation Partners. Another \$600,000 went to Pearlman’s wife, Marion F. Pearlman, as overseer of a trust in his name. Bret Pearlman is a veteran of the Blackstone Group, as well as a high-profile figure in media and communications investing, as well as philanthropy. He’s also a partner at Affinity Partners, formed by Jared Kushner, son-in-law and senior advisor to former President Donald Trump.

Pearlman’s success against UBS last week might raise eyebrows: Though the bank would not comment for this story, UBS previously noted that Finra panels have denied claims against the YES product in almost half the cases.

In fact, just two months ago, another huge name in investing, Robert Garvy, the founder of quantitative investment firm INTECH, was sent home empty-handed when he appealed for \$1.4 million in damages for his revocable trust in a suit that also involved the YES strategy.

In denying Garvy’s claim, the Finra panel said, the “claimant is well versed in the securities and investment world, as well as being highly educated. On the account forms, [Garvy] has over 50 years investing experience, which includes options. Claimant sold INTECH for over \$100 million dollars. Claimant listed his net worth as \$100 million and was investing \$5 million in YES. He also listed his risk tolerance as ‘High.’”

The attorneys for the Pearlmans said that since Finra panels don’t release their reasons for their decisions, it was not clear why a seasoned investor like Pearlman could get a cure from arbitrators and Garvy couldn’t.

The YES product is an iron condor strategy that typically spreads pairs of call and put options across the S&P 500. Designed for wealthy investors, UBS describes it this way: “To help mitigate downside and upside market exposure, short-term below-market puts and above-market calls options are purchased with the same duration as the puts and calls sold.”

The SEC says: “Clients participate in YES by pledging as collateral for those options trades a portfolio of existing securities held at UBS with a view towards enhancing returns on their existing portfolio.”

The YES product came over to UBS in 2015 when the bank hired the Credit Suisse team of Matthew S. Buchsbaum, Scott M. Rosenberg, Gerard Costello and Sonia M. Attkiss; they all now work under the Flatiron Partners name at UBS. According to the SEC, the team told UBS advisors and clients that the YES vehicle would make them 3% to 5% returns per year and suffer, at worst, 1% annual losses. An early 11% loss for one month was acknowledged, the SEC said, but presented as an opportunity to sell options at a premium. The YES team called this “hurricane insurance,” according to the regulator.

While the YES strategy was supposed to smooth the ride for clients, attorneys say that the product ended up making very obvious directional bets on the market and then succumbed to volatility.

A class action suit filed against UBS in late 2021 said some 1,500 UBS customers used YES accounts at the product's height and had put \$5.7 billion in the strategy. (The class action suit was filed under the name of investor Christian Dumontet.) The strategy lost 18.44% in 2018 and 11.34% in 2020, according to a UBS statement seen by *Financial Advisor* last year. Attorneys claim some \$750,000 to \$1.2 billion overall has been lost in the YES product.

The SEC said there were early warnings: "According to UBS's internal risk reports, YES's potential maximum losses generally ranged between 10% and 20% [from February 2016 to February 2017]. The internal risk reports were not shared with financial advisors or clients."

A number of UBS advisors, in fact, have appealed to Finra's dispute resolution arm to have their names cleared after they were named in YES complaints, claiming they had no direct involvement with the product and that it was handled by the New York office of UBS

According to one Finra arbitration filing, investors had to have at least \$5 million in assets to participate in the program (personal wealth that excludes their home), and they had to have "a high risk tolerance, no short-term liquidity needs, and willingness to accept high fluctuations in the value of assets and to achieve capital appreciation (not income)."

One lawyer who has had success in Finra arbitration suits over the product, Jeffrey Kaplan at Dimond, Kaplan and Rothstein, said last year that clients were allowed to invest less than \$5 million in the product but had a 1.75% overlay fee. He also said that suits against UBS have become more successful as more documents about the product have come to light, specifically UBS's knowledge ahead of time of how risky the product could actually be.

Attorney Ross Intelisano, whose firm Rich, Intelisano & Katz represented Bret and Marion Pearlman, said that the latest \$3.2 million award reflects all of the couple's losses, though their original claim was for \$7 million plus fees and interest.

Intelisano's firm won one of the biggest hauls in a YES case last year, when a client couple from Florida, George and Sandra Schussel, won an award of more than \$5 million.

This copy is for your personal, non-commercial use only. Reproductions and distribution of this news story are strictly prohibited.

- [View reprint options](#)
- [Order a reprint article now](#)
- [Print](#)